

October 26, 2016

Mr. Steven T. James, House Clerk  
Office of the Clerk of the House  
State House, Room 145  
Boston, MA 02133

Dear Mr. James:

Pursuant to the provisions of Section 33 of Chapter 30 of the General Laws, I hereby submit the attached legislative recommendations from the Public Employee Retirement Administration Commission for consideration during the 2017-2018 legislative session.

The proposed bills are:

**1. AN ACT REPEALING CHAPTER 32, SECTION 90(G)  $\frac{3}{4}$**

**Summary:**

This bill will repeal Section 90(G)  $\frac{3}{4}$  which currently requires that an employee who has reached the age of 70 and wishes to continue to accrue creditable service and receive regular compensation must elect to do so. Individuals that have not affirmatively accepted the provision of this paragraph may not accrue creditable service and receive regular compensation after reaching the age of 70.

The Commission is seeking to repeal Chapter 32 Section 90G  $\frac{3}{4}$  because there it has been advised by the Commission's tax counsel that Section 90G  $\frac{3}{4}$  is discriminatory. Tax counsel has determined that voluntary contributions made under Section 90G  $\frac{3}{4}$  by members over age 70 must be made on a post-tax basis, in order to preserve the overall IRS tax qualification of the retirement system, rather than the pre-tax basis that is applicable to members under age 70. Thus Section 90G  $\frac{3}{4}$  discriminates against those over 70. If the legislation is passed members would simply continue making contributions and accruing creditable service after age 70 and their contributions would be on a pre-tax basis just like all other members of the system under age 70. The Commission also believes that repeal will ensure that members will retain all rights of membership such as disability protection.

The second section of the legislation makes clear that any member who has previously made an election under the current provisions of section 90G  $\frac{3}{4}$  will have said election

maintained. The 90G  $\frac{3}{4}$  election has always been, by statute, irrevocable and this provision maintains that requirement.

## **2. AN ACT PROVIDING FOR CONTINUING EDUCATION CREDITS FLEXIBILITY**

### **Summary:**

In its implementation of Section 20(7) of Chapter 32, the Commission has found that on occasion a member may meet the technical requirements of 18 hours of continuing education for their 3-year term of office but may not have met the requirement that at least 3 credits be earned each year or that no more than 9 credits may be earned in any one year of the term.

Completing 18 hours of continuing education training within three years certainly meets the spirit and the overall intent of the law. PERAC feels that having the flexibility to exempt retirement board members from the letter of the law - in exactly how they meet the 18 hour requirement - makes sense since situations in which a member may have earned the required 18 credits, but not done so exactly as prescribed in the current statute, occur and they thus could be precluded from serving any subsequent additional terms on the board. This was not the intent of the original legislation.

This bill will provide the Commission with the flexibility where appropriate on a case-by-case basis to make exceptions to the framework of how the hours of training are earned.

## **3. AN ACT RELATIVE TO CHAPTER 32, SECTION 15(7) DETERMINATIONS**

### **Summary:**

Section 15 (7) was inserted in Chapter 32 by Section 9 of Chapter 36 of the Acts of 2012 and requires that no member of the retirement system is entitled to receive a retirement allowance based upon salary which was intentionally concealed from or intentionally misreported. Section 15(7) provides that PERAC is responsible for making this determination.

PERAC's sole concern in this matter has always been to ensure that the mandate of the General Court that PERAC formulate determinations in Section 15(7) cases be fulfilled. Under current statutory constraints in PERAC's operational capabilities, effectively carrying out this mandate is unachievable as the Commission lacks the authority to hold hearings, issue subpoenas, examine records and administer oaths.

Retirement boards already possess the hearing, subpoena and related powers necessary to conduct the required evaluations and generate the determinations outlined in Section 15(7). Therefore the proposed language of this bill requires retirement boards rather than PERAC to conduct the hearings necessary to make determinations under Section

November 7, 2016

Page Three

15(7). In addition, the language provided assures that PERAC's general mandate to oversee retirement board activities will be upheld in these cases.

Mr. Clerk, below are the three legislative bill drafts on separate pages incorporating these recommendations. Please feel free to contact me should you have any questions about the content of these bills or need any additional information. Thank you for your assistance.

Sincerely,

Joseph E. Connarton  
Executive Director

Attachments

JEC/keb  
House Clerk's letter 102616.docx

**AN ACT REPEALING CHAPTER 32, SECTION 90(G)  $\frac{3}{4}$ .**

SECTION 1. Chapter 32 of the General Laws as appearing in the 2014 Official Edition is hereby amended by repealing Section 90G  $\frac{3}{4}$ .

SECTION 2. Any member who made an election under G.L. c. 32, s. 90G  $\frac{3}{4}$  prior to the effective date of this act shall have said election maintained after the repeal of said section and no further action need be taken by the member or retirement board.

**AN ACT RELATIVE TO CHAPTER 32, SECTION 15(7) DETERMINATIONS.**

SECTION 1. Subdivision 7 of section 15 of chapter 32 of the General Laws is hereby amended in line 74 by striking the phrase: “as determined by the commission”.

SECTION 2. Said subdivision is further amended by inserting the following at the end of the paragraph:

The board shall notify the commission of any proceedings commenced pursuant to this section and shall provide any and all documents relating to said proceedings upon request of the commission. Notwithstanding the waiver provisions of Paragraph (a) of Subdivision 3 of section 21 of chapter 32 of the General Laws any calculations performed pursuant to this section will be submitted to the commission for approval.

**AN ACT PROVIDING FOR CONTINUING EDUCATION CREDITS FLEXIBILITY.**

Subdivision (7) of Section 20 of Chapter 32 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended in line 905 by adding:

A board member may petition the commission for a waiver of the yearly hours restrictions due to extenuating circumstances, provided that the member completes the required 18 hours of training during their term.